

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF WISCONSIN,

Plaintiff,

-vs-

Case No. 11-CR-133-BBC

THOMAS VALLEY,

Madison, Wisconsin

August 14, 2013

Defendant.

1:07 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB,

APPEARANCES:

For the Plaintiff: Office of the United States Attorney
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Also appearing: Thomas Valley, defendant
Lori Baker, U.S. Probation
Officer

Lynette Swenson RMR, CRR, CBC
Federal Court Reporter
U.S. District Court 120 N. Henry St., Rm. 520
Madison, WI 53703 (608) 255-3821

1 (Call to order)

2 THE CLERK: Case Number 11-CR-133-BBC-1.
3 *United States of America v. Thomas Valley* is called for
4 a sentencing hearing. May we have the appearances,
5 please.

6 MS. ALTMAN: Good afternoon, Your Honor. The
7 United States appears by Elizabeth Altman.

8 THE COURT: Thank you.

9 MR. DUTCH: Good afternoon, Your Honor.
10 Mr. Valley is present in court with his attorney Greg
11 Dutch. Nathan Otis is here as well. Thank you, Judge.

12 THE COURT: Thank you. Mr. Valley, I will
13 start out by telling you that you have a right to appeal
14 any sentence that's imposed on you today. If you think
15 the sentence is illegal in any respect, you can appeal
16 to the Court of Appeals for the Seventh Circuit.
17 Mr. Dutch is obligated to continue to represent you
18 unless he would be relieved of that obligation by the
19 Court of Appeals, and if he were relieved of the
20 obligation, he would -- the Court of Appeals would
21 appoint new counsel to represent you, and that would
22 still be at government expense. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And have you read the presentence
25 report and discussed it --

1 THE DEFENDANT: Yes, I have.

2 THE COURT: -- with Mr. Dutch?

3 THE DEFENDANT: Yes.

4 THE COURT: And were there any objections that
5 you had to anything in the report?

6 THE DEFENDANT: No.

7 THE COURT: Okay. Mr. Dutch, for the record
8 you've read the presentence report and the addendum and
9 you had no objections to anything in there?

10 MR. DUTCH: Judge, I did want to bring up, and
11 I talked to Ms. Baker, it was only today, just about a
12 couple of issues on the supervisory plan that's set
13 forth on paragraphs 151, and I wanted -- I'll just wait
14 one second while the Court gets --

15 THE COURT: Okay.

16 MR. DUTCH: And in -- I just somewhat turn my
17 attention more specifically to some of these relatively
18 recent -- and I'm not exactly sure why some of them
19 pertain exactly to the client. So for purposes of
20 today, I just would like to lodge an objection and I can
21 indicate for No. 2 where it says "refrain from incurring
22 new credit charges," I don't know why that would be
23 relevant when Mr. Valley is on supervision.

24 I've got two other ones as well. Should I just let
25 you know?

1 THE COURT: Well, the reason that's relevant is
2 that that's a good indication of what he's doing with
3 his money and if he's purchased -- using the credit card
4 or new credit card, trying to get a different one in
5 order to buy pornographic images, that would be
6 significant.

7 MR. DUTCH: Okay. Then on No. 6 where it says
8 that "the probation office is authorized to install any
9 application as necessary on such device owned or
10 operated by defendant and shall randomly monitor those
11 media," again I would object to that as being overbroad.
12 Vague. I'm not sure why it's particular to Mr. Valley
13 for that particular component of that.

14 THE COURT: Not in this case, Mr. Dutch. This
15 is an absolutely necessary condition for somebody who
16 has engaged in the criminal activities that Mr. Valley
17 has. Now, we don't know what the computer devices are
18 going to be when he's on probation or supervised
19 release, but the point is that the only way that the
20 probation office can supervise Mr. Valley is to know
21 what he's watching and looking at, working on on
22 whatever devices he has.

23 MR. DUTCH: And the last one would be No. 8.
24 I'm sure the Court has dealt with this one before. "Not
25 associate with any person under the age of 18." Again,

1 it appears overbroad. I think I understand given the
2 charges of this why it might be there. I obviously am
3 concerned about family members, things of that sort. So
4 I would just indicate that would be my final concern and
5 objection.

6 THE COURT: I think it definitely applies to
7 family members.

8 MR. DUTCH: Then, Judge, I have reviewed it. I
9 have -- we filed one objection in regards to the
10 computer, and then I'm not sure -- I believe the
11 government also filed an objection to the report as
12 well. Thank you.

13 THE COURT: And Ms. Altman, for the record
14 you've read the presentence report and you had one
15 objection; is that correct?

16 MS. ALTMAN: That is correct, Your Honor.

17 THE COURT: And that was to the two-level
18 increase for the attempted obstruction of justice while
19 Mr. Valley was awaiting sentencing or right after he was
20 arrested.

21 MS. ALTMAN: Shortly after he was arrested,
22 Your Honor, yes. We believe that his behavior from the
23 jail certainly was obstruction; that the two-level
24 increase is warranted, and then acceptance -- should not
25 get a reduction for acceptance of responsibility because

1 of the obstructing enhancement and there being no
2 special circumstances that would allow for the reduction
3 when he has obstructed.

4 He sent letters instructing his girlfriend to
5 destroy evidence. He provided step-by-step instructions
6 to log into his accounts and to delete profiles and
7 information. More troublingly he sent letters
8 instructing her to write a letter making it look like
9 her father was confessing to the crime and setting him
10 up and framing him. In the government's view, those
11 actions were an attempt to impede his prosecution.

12 I understand that the guideline change, whether it
13 be two levels or two plus and minus two don't impact
14 necessarily his guideline range since it is already so
15 high, but I don't think that's a factor that should be
16 considered. I think that the facts should be considered
17 and the facts in this case certainly warrant that
18 enhancement.

19 THE COURT: Thank you. Mr. Dutch, anything you
20 wish to say about that?

21 MR. DUTCH: Judge, I would just -- I think -- I
22 agree with the probation officer's explanation of this.
23 I don't think this was reasonably probable. I would
24 just quote *US v. DeLeon*, 603 F.3d 397, Seventh Circuit
25 2010, where the court says all that is -- "what is

1 required for obstruction of justice is that the act
2 could affect to some probability the outcome of the
3 judicial process." I don't think in this case it does,
4 and unless the Court has specific questions, we would
5 just defer to the probation department on this as well.

6 THE COURT: All right. I am not going to give
7 the two-level increase, although I certainly find
8 Mr. Valley's actions misguided, even stupid. He
9 instructed his girlfriend to delete account profiles
10 from his computer and the computer had already been
11 seized, and he also asked her to write a letter that
12 would make it appear someone else was confessing to the
13 crime, and that was probably beyond her ability to do
14 successfully. And as Ms. Altman has already pointed
15 out, adjusting the offense level upward for obstruction
16 of justice would not change the advisory guideline
17 range.

18 All right. And then as far as the use of the
19 computer, it is ordinarily my practice not to give two
20 points for use of computer because that's an ubiquitous
21 behavior. In this case, however, Mr. Valley used the
22 computer specifically to allow him to communicate in the
23 persona of various men and to produce pornographic
24 images and I think that's an entirely different kind of
25 situation. This is not just sitting down at the

1 computer and typing in what you need to type to get
2 images. This was -- took it far beyond that. So I'm
3 denying both objections, one by the government and the
4 one by the defendant.

5 Ms. Altman, is there anything you wish to say about
6 sentencing?

7 MS. ALTMAN: Yes, Your Honor. Before I do that
8 though, it is our position that if the Court is granting
9 the two-level reduction for acceptance, I would move for
10 the additional one level. I don't believe that's
11 factored in the presentence report, but he did plead and
12 he did give us notice, and so we believe that if the
13 Court is giving the first two, we should bring the
14 motion for the third point.

15 THE COURT: Thank you. Again, that's not going
16 to make any difference in the offense level -- the
17 guideline range I should say.

18 MS. ALTMAN: And so then moving on to my
19 sentencing argument, there's a couple things I would
20 like to focus on.

21 First with regard to Docket No. 88 and the
22 sentencing brief and memorandum, it indicates in the
23 first paragraph, it focuses exclusively on the flawed
24 methodology used to create sentence guideline 2G2.2 and
25 why this provides reason for the Court to vary downward

1 from the applicable sentencing guidelines.

2 These are arguments we've seen before about regard
3 to 2G2.2. It relates to distribution of child
4 pornography. I recalculated the guidelines if you
5 ignore 2G2.2 and figure them out using only 2G2.1, which
6 does not have the same alleged flaws or there certainly
7 has not been the same arguments --

8 THE COURT: Wait a minute. I need to get my
9 book so I can follow along with your argument. And
10 perhaps --

11 MS. ALTMAN: It's a short argument.

12 THE COURT: -- for the benefit of other people
13 in the courtroom who don't know the terminology that
14 you're using, it would help if you gave a little
15 explanation.

16 MS. ALTMAN: Yes, Your Honor. The guidelines
17 in this case were calculated using the guidelines for
18 2G2.2, which is the distribution of child pornography,
19 and 2G2.1, which is the production of child pornography.
20 As the Court is aware, and obviously Mr. Dutch is aware
21 and because of the brief that's been filed, 2G2.2 has
22 recently been the subject of many attacks as to the
23 enhancements that are part of 2G2.2 and empirical data
24 and things like that. So because he started out by
25 attacking 2G2.2, the distribution, I recalculated the

1 guidelines using only production, taking the attacked
2 guideline off the table.

3 THE COURT: I see.

4 MS. ALTMAN: And I did check my calculations
5 with Ms. Baker because she is certainly much more
6 familiar with the guidelines than I am, and if you were
7 to use only 2G2.1, that is totally discarding the
8 distribution guideline and factoring in the production
9 for each of these girls, he still ends up at a level 41
10 as his offense level, minus three for acceptance, which
11 the Court has now indicated he should have, which puts
12 him, even just using a production, at 235 to 293,
13 certainly encompassing the maximum in this case.

14 So should the Court find the issues with 2G2.2 and
15 the arguments raised in that brief to be valid, the 240
16 months which the government is seeking as a sentence is
17 still within guidelines used only production.

18 The second thing I would like to -- does the Court
19 have any questions on that?

20 THE COURT: No, I don't. Thank you.

21 MS. ALTMAN: Okay. Thank you. The second
22 thing I'd like to comment on is the idea that the
23 defendant's mental illness is a mitigating factor.
24 First of all, while he may have had some diagnosis as a
25 child, and even that has been called into question by

1 Dr. Scrons (ph) in his evaluation by BOP, his most
2 recent diagnosis in his evaluation done at BOP found his
3 presentation to be more consistent with a personality
4 disorder than a mood disorder; found him to be angry and
5 immature. He provided contradictory stories. He told
6 grandiose tales. It detailed that his treatment records
7 showed no indication of psychosis or thought disturbance
8 but rather he had behavioral problems.

9 The evaluator found that "the psychological testing
10 reviewed his answers reflected he may be attempting to
11 exaggerate symptoms of mental illness or may reflect on
12 attention-seeking personality style."

13 It went on to say, "although his offense involved
14 the creation of personas, the evaluator did not believe
15 the defendant exhibited symptoms consistent with
16 dissociative identity disorder. Rather the evidence
17 indicated that these alter identities were part of his
18 clever and very organized ruse to manipulate his
19 items -- his victims and create a convenient cover story
20 for himself. These behaviors are not consistent with
21 those of a confused or mentally ill individual. Rather,
22 they are suggestive of practice prevarication," which
23 also opined, as I alluded to earlier, that in retrospect
24 earlier reports of hearing voices and having
25 conversations with his stuffed animals, which at the

1 time was interpreted as psychotic, may have been the
2 beginning of his pattern of fantastical lying. So to
3 the extent that there is mental illness, it does not
4 appear to mitigate the conduct in this case.

5 Additionally, the mental illness, such as it is in
6 this report as described by BOT -- BOP, makes him more
7 dangerous in that it described that he was calculating
8 and organized and those type of things. Manipulative.
9 So that makes him more dangerous. It certainly is not a
10 mitigating factor.

11 Additionally, as alluded to in the mental health
12 report, the BOP analysis, there's no indication in his
13 criminal conduct of mental illness, and in fact, it's to
14 the contrary. The defendant maintained an intricate
15 computer filing system to store images that he received.
16 He had a file for each victim where he listed the
17 victim's name, the age. It was broken into nudes,
18 nonnudes, and for each victim he had that. And it also
19 included notes about who he was pretending to be when he
20 was communicating with them and who they were.

21 For instance, some would say "Sam's girlfriend."
22 Some would say "Alan's girlfriend." All maintained
23 meticulously so that his scheme wasn't discovered when
24 he was not able to maintain the persona that he was with
25 these people.

1 Additionally, the files were well organized and
2 backed up on CDs, again indicating his organization, his
3 control of the situation. The defendant had contact
4 with approximately 60 minor girls who sent him nude
5 pictures. The majority of them are still unidentified
6 and probably won't be identified. This is certainly an
7 aggravating factor that the Court could consider,
8 particularly since it isn't included and couldn't be
9 included in a way in the guideline calculation.

10 As the Court is aware, only five additional levels
11 for grouping are allowed, so none of the other victims
12 could be included as he already -- I guess one could
13 because he received four levels for grouping. But the
14 majority of them could not be included in anything
15 because of the rules of the sentencing guidelines. So
16 the guideline calculation, as high as it is, still
17 significantly underrepresents his criminal conduct when
18 you consider all of the victims in this case.

19 This case came to law enforcement attention because
20 the defendant was distributing child pornography through
21 peer-to-peer programs. The images would be prepubescent.
22 They showed bondage. There were obviously over 600 of
23 them. From there, as the Court is aware, the search
24 warrant was executed and the full extent of his criminal
25 behavior was discovered. Numerous computers, media,

1 thumb drives, and perhaps more alarming, rope and
2 handcuffs.

3 The gist of the scheme is that the defendant would
4 pose as a teenage boy. He would befriend teenage girls
5 through social media sites. He convinced them to be
6 this teenage persona's girlfriend, either Sam or Alan
7 were the two he used commonly, and then acting as their
8 teenage boyfriend, he convinced them to send him
9 pornographic pictures and videos. If a girl would show
10 up to meet her supposed boyfriend, the defendant would
11 show up.

12 The defendant used these opportunities, it is
13 alleged, to assault, physical assault at least two of
14 the victims. CB reported that she had been sexually
15 assaulted by the defendant in his home after she went
16 there at Alan's direction after she was unable to stay
17 at a friend's house. I understand that the presentence
18 report says this is uncorroborated, but that is what she
19 reports, and while it is uncorroborated, it has not been
20 shown to be not true either.

21 Victim NV met the defendant at Brat Fest when she
22 was supposed to meet Alan and Sam there. The defendant
23 attempted to fondle her breasts and genital area at Brat
24 Fest. So he did use these opportunities to physically
25 assault some of these girls, and this certainly isn't a

1 case anyone could argue there was no hands-on behavior.

2 In addition to the physical assaults in this case,
3 there was mental abuse and manipulation of these girls.
4 Each of these girls thought that the defendant was their
5 boyfriend. These are 15, 16 and younger age girls. Not
6 only was he not their teenage boyfriend, he was also
7 giving them information that certainly would cause any
8 teenage girl great angst. For example, he told CB that
9 Alan, who she thought was her boyfriend, had been
10 stabbed and was in a coma. He told CB that he himself
11 was dying. There was another situation where two of the
12 girls were supposed to go to prom with Sam and Alan, but
13 of course Sam and Alan never showed up because there was
14 no Sam or Alan. Now the girls know now that there was
15 no Sam and Alan, but at the time they're dressed for
16 their prom. They're teenage girls and then their prom
17 date, who doesn't exist, isn't showing up. It's
18 devastating to a teenage girl. Essentially that is what
19 the defendant did to each of these girls.

20 Whether they knew it as they do know, the victims
21 we were able to identify, or the ones that don't know
22 it, they may not know now that he doesn't exist, but he
23 certainly left all of these teenage girls thinking well,
24 what happened to my boyfriend. He devastated these
25 girls. He took something from them that they can never

1 ever get back; can't be explained to them, and for that
2 reason, Your Honor, the defendant deserves the maximum
3 sentence this Court can impose, the 40 years maximum
4 between the two counts. Thank you.

5 THE COURT: Thank you. Mr. Dutch.

6 MR. DUTCH: Yes. Thank you, Judge. I have
7 tried to put forth in my sentencing memorandum really my
8 thoughts in regards to this case. It's been -- it's
9 been a complex and a, I guess for lack of a better term,
10 an interesting representation of myself and Mr. Valley.

11 When I began my representation with Mr. Valley over
12 a year ago, I was trepid, to say the least. Mr. Valley
13 was a difficult person at that time for me to deal with
14 on a personal level. I actually had apprehensions when
15 I would speak with him in the jail. He was prone to
16 outbursts, prone to grandiose stories about himself and
17 his life. And I was going through some of my notes,
18 Judge, when -- in anticipation for today's sentencing
19 and I came across some notes in regards to the mental
20 competency that Ms. Altman made reference to, that
21 report.

22 As the Court is aware, that report was just for
23 Mr. Valley as to whether he was competent to stand trial
24 and also there was a component there of whether he might
25 be unable to be found guilty because of reason of mental

1 disease or defect, which the author of that report came
2 to the conclusion, and we agreed, Judge, that he was not
3 incompetent. But to say, as Ms. Altman says,
4 questioning Mr. Valley's mental illness, I was taken
5 back a little bit. I mean one does not have the
6 childhood history that I laid out in my sentencing
7 memorandum of Mr. Valley and of his going from one
8 mental institute hospital to the other as a nine-year
9 old, as a ten-year old, if he did not have severe mental
10 illness that was diagnosed by trained psychiatrists who
11 were his treating physicians and not someone from the
12 Bureau of Prisons who saw him for an hour or two.

13 But going back, I was prepared to put on a hearing
14 for his mental competency before I had an opportunity to
15 go over in detail that report with Mr. Valley where he
16 agreed that he was competent to proceed. And I had
17 questions written down for the doctor, including
18 questions of -- that he does not trust his lawyers; that
19 I note that I cannot follow Mr. Valley many times, his
20 train of thought; his conversation is not something that
21 I understand; that he interjects names and associates
22 that do not exist; that in the middle of a conversation
23 he goes off, and there's grandiose stories. He seems to
24 focus on trivial issues and it's hard for him to see the
25 big picture. These were all questions, Judge. I note

1 that he gets very angry very quick and loses all focus
2 when he gets angry. These are all questions I had for
3 the doctor at that time.

4 And upon reflection, long hard reflection, since
5 that time that I've gotten to know Mr. Valley, and I
6 think more important since he now seems to be controlled
7 with medication, my conversations with Mr. Valley I
8 actually look forward to. We don't just talk about the
9 case and we don't talk about what to expect from this
10 Court, we talk about things about his family. He asks
11 me questions about my practice and about other areas of
12 practice I'm in. When he calls, I tell my secretary to
13 make sure you put Mr. Valley through right away. I want
14 to speak with him.

15 I'm not sure I'm going to be able to convey to the
16 Court how significantly Mr. Valley has changed since the
17 person that Ms. Altman has set forth and has brought to
18 your attention because we can't -- I can't speak for the
19 victims. I think I mentioned in my sentencing memo, I
20 think Mr. Valley would, you know, down the road somehow
21 like to be able to work out through therapy how he might
22 apologize. I spoke to Ms. Altman that none of the young
23 ladies had submitted anything, so we were not able to
24 address them specifically. But I think that what this
25 shows for me is that Mr. Valley is in a position, with

1 proper medication -- his mental illness is as
2 significant, Judge, as if someone was sitting here with
3 Downs Syndrome and that -- but he was functional and he
4 could work a computer. There's no difference except he
5 looks different. He has had such, such significant
6 trauma as a child. Everything from the death -- the
7 abandonment of his father, the death of his grandfather
8 when he's nine years old, abusing his body, people
9 abusing his body, going from foster home to foster home,
10 from mental institution to mental institution,
11 commitment to commitment, that is to say that Mr. Valley
12 is not in -- does not have a severe mental health issue
13 and should not be mitigated by that mental health factor
14 would be to me looking at this with jaundice eyes. And
15 it may be yes, he has a mental health illness, but still
16 he did this, and so we should really focus in on
17 punishment as opposed to rehabilitation and allowing an
18 ability for him to get into the community at some point
19 in time to be able to be supervised in the community
20 with treatment and with -- and with medication. But I'm
21 hoping that the Court can see good in Mr. Valley,
22 understanding and acknowledging what happened and what
23 those girls must have gone through.

24 But I just -- you know, as I said, I put everything
25 in, but I just have problems that we should not

1 institutionalize for a significant period of time the
2 mentally ill, Judge. We're better than that. Thank
3 you.

4 THE COURT: Thank you. Mr. Valley, is there
5 anything you wish to say on your own behalf?

6 THE DEFENDANT: I would like to say that I am
7 truly sorry for the things that I have done and that if
8 the Court is willing to forgive me for my problems that
9 I've had with texting people and getting stuff from
10 them, that I will change if I get a reasonable
11 sentence -- well, regardless whether I get a reasonable
12 sentence or not I'll still change my ways.

13 I'll stay on medication just so I can be a better
14 person. And that's all I've got to say.

15 THE COURT: Thank you. Mr. Valley, this is a
16 very difficult case. Mr. Dutch makes a good argument
17 for treating you differently because of your mental
18 illness and the problems that you've had as a child,
19 difficulties that your mental problems caused you and
20 your mother and the things that happened to you. At the
21 same time, I'm looking at somebody who is a definite
22 danger to women in this society. The number of girls
23 that you got involved with, either in ways that were
24 completely inappropriate and illegal is staggering. I
25 see a lot of pornography cases, but generally they are

1 of images, the distribution of images, receipt of
2 images.

3 You were producing images. You were talking young
4 girls into posing for lewd pictures of themselves, their
5 sexual organs. You know, I don't know what kind of
6 girls you happen to connect with, but certainly they
7 were very susceptible to the kind of statements that you
8 were making to them and what you were asking them to do.

9 I realize that you have mental problems and that
10 you've been struggling with a lot of either mental
11 illness or behavioral disorders, but I have to think of
12 the danger that you present to the community. As far as
13 I can tell, you are a conniving, manipulative,
14 self-absorbed young man and that despite everything that
15 your mother did for you in bringing you up, and it seems
16 to have been a heroic effort, you are still consumed
17 with what you yourself want and that whatever steps you
18 need to take, whatever effect those steps will have on
19 other people, you're going to take because you want to
20 gratify yourself.

21 You had no concern for your girlfriend when you
22 were engaging in these interchanges with other young
23 girls. You had no concern for your mother who was
24 providing you a place to live, along with your
25 girlfriend. It would be wonderful if there were some

1 kind of mental institution that was capable of dealing
2 with you and with other people that have problems like
3 yours. Unfortunately, sadly, we don't have those kinds
4 of institutions. We don't have those organizations that
5 could protect the community and in a way that would be
6 more helpful to you than a term of imprisonment.

7 The question is do I say I really feel sorry for
8 your problems and you don't -- you're not going to get
9 any better in prison, so I should keep you out or give
10 you a short-term? How do I look at all the girls out
11 there that are potential victims of yours? They deserve
12 protection, and the only way I know of to protect them
13 is to put you in custody. I wish for your sake and
14 particularly for your mother's sake, because I can tell
15 that she's -- this has been an agonizing time for her,
16 but I don't see any other option.

17 I accept the plea agreement on the basis of my
18 findings that the offense of conviction adequately
19 reflects your criminal conduct and the plea agreement
20 does not undermine the statutory purposes of sentencing.
21 In determining your sentence, I will take into
22 consideration the advisory guidelines and the statutory
23 purposes of sentencing set forth in 18 United States
24 Code, Section 3553(a).

25 The probation office has prepared the advisory

1 guideline calculations correctly using the current
2 manual. The guidelines would not change if the
3 probation office had used earlier versions of the
4 guidelines. I've dealt with the government's objection
5 to not giving you a two-level increase for obstruction
6 of justice. The calculations take into account all
7 relevant conduct as well as stipulated conduct related
8 to Counts 1-6 of the Indictment.

9 Your conduct is subject to the grouping rules and
10 multiple count analysis under Section 3D1.2 and 3D1.4,
11 and I apologize, this will be incomprehensible to
12 anybody who hasn't been working with it for years, but I
13 have to go through it.

14 Group 1, Counts 1 and 2 of the Information which
15 are the counts of conviction, and Counts 2 and 3 of the
16 Indictment which are stipulated conduct, are grouped for
17 guideline calculation purposes. The base offense level
18 is 22. Two levels are added because your relevant
19 conduct involved the possession and distribution of
20 images of prepubescent minors. Because you distributed
21 images to a case agent, two levels are added.

22 Your relevant conduct involved images of bondage in
23 adult men penetrating the vaginas of prepubescent
24 minors. Those images portrayed sadistic or masochistic
25 conduct or violence. Therefore, four levels are added.

1 Your conduct involved the production of child
2 pornography for more than one victim. Accordingly, five
3 levels are added because your conduct involved a pattern
4 of sexual exploitation of minors. Two levels are added
5 because you used a computer or interactive computer
6 service to solicit minors to produce child pornography
7 and to distribute and receive images of child
8 pornography. As I said, I ordinarily don't give a
9 two-level enhancement for use of a computer, but in this
10 case the use was for producing pornography images.

11 Five levels are added because your relevant conduct
12 involved more than 600 images. The adjusted offense
13 level is 42. And I note that if I had used the approach
14 that Ms. Altman went over, the offense -- let me just
15 check one thing --

16 MR. DUTCH: 38, I believe.

17 THE COURT: So Ms. Altman, you were figuring
18 that the guideline range would be 38; is that correct?

19 MS. ALTMAN: With acceptance, yes.

20 THE COURT: With acceptance.

21 MS. ALTMAN: 41 minus 3, yes.

22 THE COURT: Right. Okay. Anyway, the advisory
23 guideline range would be 235 to 295 months. Group 2,
24 the guideline for Count 1 of the Indictment, a violation
25 of 18 United States Code, Section 2251(a) is 2G2.1. The

1 base offense is 32. The victim was 13, so two levels
2 are added because she was at least 12 but younger than
3 16. Two levels are added because you used a computer to
4 solicit a minor to engage in sexually explicit conduct.
5 The adjusted offense level is 36.

6 Group 3. The guideline -- the base offense level
7 is 32. The victim was 15. So two levels are added
8 because the victim was at least 12 but younger than 16.
9 Two levels are added because you used a computer to
10 solicit a minor to engage in sexually explicit conduct.
11 The adjusted offense level is 36.

12 And the same thing would apply for Count 5 of the
13 Indictment and for Count 6 of the Indictment, except
14 that as to Group 5, the base offense level is 32. With
15 two levels added, the adjusted offense level is 34.

16 Three levels are added to the offense group with
17 the highest adjusted offense level, which is 42, with a
18 total adjusted offense level of 45. You had several
19 additional known victims and approximately 50
20 unidentified victims. Each minor sexually exploited is
21 to be treated as a separate count of conviction, whether
22 or not charged or convicted. You had victims who were
23 not considered in the guideline calculations because you
24 had the offense level points contemplated by the
25 guidelines. So, ever I'm taking the additional conduct

1 into consideration in sentencing.

2 You'd qualify for a three-level downward adjustment
3 because you've demonstrated acceptance of responsibility
4 for your offense as evidenced by your timely plea, as
5 well as your admission of guilt during the plea hearing,
6 and the government has moved for the additional
7 reduction.

8 Ordinarily with a total offense level of 42 and a
9 criminal history category of 1, you would have a
10 guideline imprisonment range of 360 months to life. But
11 the statutory maximum term of imprisonment is 20 years
12 for each count. Therefore, the guideline imprisonment
13 term is 480 months.

14 You were raised by your mother, who from all
15 accounts did her best to care for you and to obtain help
16 for you. You had little contact with your father. Your
17 grandfather was your only male role model, but he died
18 when you were only nine and that no doubt exacerbated
19 your behavioral and mental health problems.

20 You were unable to attend school for any length of
21 time because of your mental health problems. You have
22 limited work history. You're supported by disability
23 benefits. You have a history of using controlled
24 substances.

25 Your criminal history includes three convictions

1 for disorderly conduct that were reportedly related to
2 domestic disputes with a prior girlfriend.

3 After law enforcement agents became aware that you
4 distributed images of child pornography online through
5 peer-to-peer networks, they executed a search warrant at
6 your mother's residence where you lived and seized
7 computers and related equipment. Through further
8 investigation and forensic analysis of the computer
9 equipment, agents became aware that your scheme extended
10 beyond the typical case involving the possession,
11 distribution or receipt of child pornography.

12 Using the personae of teenage boys, you had been
13 soliciting minor girls online for the purpose of
14 producing child pornography. You developed so-called
15 relationships with the girls, sent them photos of your
16 genitals and instructed them to send sexually explicit
17 photos of their own genitals. You posed as the uncle of
18 your various personae to meet some of the girls in
19 person for the purpose of engaging in sexual
20 intercourse. You maintained an intricate computer
21 filing system to store images you received and kept
22 notes about the conversations you had with each girl.
23 You also lured girls to your home under the proposition
24 that they would do modeling for you and that you
25 operated a modeling agency.

1 You have a history of grandiose thinking and
2 fabrication of stories about your life. You are
3 calculated, manipulative and deceitful in your actions,
4 preying on young girls for your own sexual
5 gratification. This predatory conduct demonstrates your
6 dangerousness to the community.

7 Taking into consideration the nature of the offense
8 as well as your personal history and characteristics, as
9 well as the fact that your guideline term of
10 imprisonment greatly exceeds the statutory maximum, I'm
11 persuaded that a custodial sentence of 40 years is
12 reasonable and no greater than necessary to satisfy the
13 statutory purposes of sentencing. Such a sentence will
14 serve to hold you accountable, protect the community,
15 and provide you the opportunity for rehabilitative
16 programs and achieve parity with the sentences of
17 similarly-situated offenders.

18 As to Counts 1 and 2 of the Information, it is
19 adjudged that you are committed to the custody of the
20 Bureau of Prisons for a term of 240 months on each
21 count, with the term of imprisonment on Count 2 to run
22 consecutively to the term imposed on Count 1. I
23 recommend that you receive the opportunity to
24 participate in sex offender treatment as well as
25 educational and vocational training.

1 I further recommend that you be afforded the
2 opportunity for pre-release placement in a residential
3 re-entry center with work release privileges. The term
4 of imprisonment is to be followed by a life term of
5 supervised release subject to the standard conditions.

6 In light of the nature of the offense and your
7 personal history, I adopt the special conditions set out
8 in the presentence report. Neither party has raised any
9 objection -- well, I'm sorry. Mr. Dutch has raised
10 objections and I've dealt with them. I believe that all
11 the conditions are appropriate in this instance.

12 Although this offense is not drug related, you have
13 a history of using controlled substances before engaging
14 in sexually explicit conduct. Therefore, the mandatory
15 drug testing requirement is not waived. You shall
16 submit to one drug test within 15 days of your release
17 from custody and at least 10 periodic tests thereafter.

18 It is adjudged that you are to pay a \$200 criminal
19 assessment penalty to the Clerk of Court immediately
20 following sentencing. No restitution will be ordered
21 because none of the victims in this case have made any
22 request for restitution.

23 You do not have the means to pay a fine without
24 impairing your ability to support yourself and pay
25 restitution upon -- that's not right. There's no

1 restitution. Probation office is to notify local law
2 enforcement agencies and the State Attorney General of
3 your release to the community. And then I've ordered --
4 I've entered a final order of forfeiture for the
5 property seized from you and identified in the
6 forfeiture order.

7 Anything else in this case, Ms. Altman?

8 MS. ALTMAN: No, Your Honor. Thank you.

9 MR. DUTCH: Judge, I noticed that there was a
10 report and recommendation by the Magistrate in regards
11 to some motions that we filed and I don't know if you've
12 adopted that yet, but I'm wondering if the Court could
13 draw its attention because I believe -- part of the
14 appeal process will be --

15 THE COURT: Oh, I will deal with that promptly.

16 MR. DUTCH: Thank you. And then I would ask
17 that the Court consider having Mr. Valley placed in a
18 facility close -- as close to home as possible, and I
19 actually would consider the Court or ask the Court to
20 consider a medical facility for Mr. Valley.

21 THE COURT: Oh, I wouldn't get anywhere
22 recommending that, but I will recommend the placement
23 close to home.

24 MR. DUTCH: Okay. I think that was the two
25 issues that I had.

1 THE COURT: Okay. I have recommended medical
2 facilities in the past and those recommendations are not
3 worth the paper they're written on unfortunately. The
4 Bureau of Prisons -- and it has its own standards and
5 its own concerns to worry about. But I'm sure that if
6 the Bureau picks up on it, it will act on it and make a
7 decision based on what it thinks Mr. Valley needs.

8 MS. ALTMAN: Thank you.

9 THE COURT: Court will recess.

10 (Proceedings ended at 1:52 p.m.)

11
12 * * * * *

13 I, LYNETTE SWENSON, Certified Realtime and Merit
14 Reporter in and for the State of Wisconsin, certify that
15 the foregoing is a true and accurate record of the
16 proceedings held on the 14th day of August 2013 before
17 the Honorable Barbara B. Crabb, District Judge for the
Western District of Wisconsin, in my presence and
reduced to writing in accordance with my stenographic
notes made at said time and place.
Dated this 5th day of September 2013.

18
19 /s/_____

20 Lynette Swenson, RMR, CRR, CBC
21 Federal Court Reporter
22

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24 apply to any reproduction of the same by any means
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